IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2954 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIMLABEN RAMESHCHANDRA RANINGA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2954 of 2003

MR MIHIR H JOSHI for Petitioners.

Mr. Nagesh Sood, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 16/06/2004

ORAL JUDGEMENT

The petitioners preferred the present Special Civil Application under Article 226 of the Constitution of India for an appropriate writ, direction or order, quashing and setting aside the order/communication of the State Government dated 15.3.2002 and also the order passed by the competent authority and Deputy Collector,

(Urban Land Ceiling), Rajkot, dated 17.9.1980 by which the land admeasuring 505.16 sq.metres of land situate at Jagannath Sheri was included in the holding of original-land owner for the purpose of considering the same under the provisions of The Gujarat Urban Land (Ceiling & Regulation) Act, 1976. Husband of the petitioner No.1 had submitted prescribed form/declaration under Section 6(1) of The Gujarat Urban Land (Ceiling and Regulation) Act, 1976 ('the Act' for short) before the competent authority. By order dated 17th September 1980 the property/land admeasuring 505.16 sq.mtrs. of land situate at Jagannath Sheri was considered in the holding of the original-land owner Shri Rameshchandra Shamji Raninga and his contention not to include the said property in his holding on the ground that the said property is in the name of his wife was negatived. By order dated 23rd December 1983 the competent authority and Deputy Collector, ULC, Rajkot, processed the form and declared 536.19 sq.mtrs. of land as excess vacant land. It seems from the record that the said order passed by the competent authority/Deputy Collector, ULC, Rajkot dated 23rd December 1983 was challenged by husband of petitioner No.1 and father of petitioners No. 2 and 3 by preferring an appeal before the Urban Land Ceiling Tribunal under Section 33 of the Act which came to be dismissed by the Tribunal by judgment and order dated 14.3.1988 confirming the order passed by the competent authority-Deputy Collector, ULC, Rajkot, declaring 536.19 sq.mtrs. of land as excess vacant land. After the dismissal of the appeal by the competent authority the possession of the land in question was taken over by the State Government on 23rd May 1988. From the record it is also emerged that Special Civil Application No. 4465 of 1998 filed by Rameshchandra, i.e. husband of petitioner No.1 and father of petitioners No. 2 and 3 original-declarant also came to be dismissed and the order passed by both the authorities below declaring 536.19 sq.mtrs. of land as excess vacant land came to be confirmed.

2. After coming into force of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 with a view to get the benefit of the same the said Rameshchandra, husband of petitioner No.1 and father of petitioners No. 2 and 3 had filed Special Civil Application No. 6678 of 1999 and also prayed that the possession of the land admeasuring 536.19 sq.mtrs. be restored to him. However, in view of the judgment delivered by the Division Bench of this Court rejecting the challenge to the validity of the Repeal Act, an order came to be passed to decide and dispose of the aforesaid Special

Civil Application by learned Single Judge and accordingly the aforesaid Special Civil Application No. 6678 of 1999 was placed before the learned Single Judge and the learned Single Judge of this Court (Coram:Miss Justice R.M. Doshit, J.) by judgment and order dated 7.8.2001 dismissed the aforesaid Special Civil Application by holding that the possession of the land in question has already been taken over by the State Government and the said land cannot be restored to the petitioner. Having failed to get any order in their favour another attempt is made by the petitioners to upset the orders passed by the competent authority, the appellate authority and this Court by which the land admeasuring 536.19 sq.mtrs. is declared to be the excess vacant land andd the possession of which is already taken over by filing the present Special Civil Application. It is the contention of the petitioners that the possession of the land in question which is declared as excess land is still with the petitioners and therefore they are entitled to the benefit of the Repeal Act of 1999. They have also assailed the order passed by the competent authority dated 17.9.1980 on the ground that the benefit of judgment of the Hon'ble Supreme Court in the case of Meera Gupta is not given and the competent authority has wrongly included the land/property admeasuring 505.16 sq.mtrs. situated at Jagannath Sheri in the holding of husband of petitioner No.1 Rameshchandra Shamji Raninga. It seems that the petitioners had preferred Special Civil Application No. 9541 of 2001 before this Court and the petitioners withdrew the aforesaid Special Civil Application with a liberty to move an application/revision before the State Government and accordingly the petitioners have moved a revision/application before the State Government for deleting the land in question from the list which is kept by the State Government. Considering the fact that the possession of the land in question is already taken over by the State Government, the State Government turned down the request by order dated 15th March 2002 and the said order is also challenged by the petitioners in the present Special Civil Application, Notice was issued by this Court and in response to the same Shri Sood, the learned AGP appears on behalf of the State Government.

3. The learned advocate appearing on behalf of the petitioners had submitted that the order passed by the competent authority and Deputy Collector, ULC, Rajkot, dated 17.9.1980 in considering the land/property admeasuring 505.16 sq.mtrs. of land situated at Jagannath Sheri was wrongly included in the holding of Rameshchandra Shamji Raninga, the husband of petitioner

No.1. He has also submitted that as such the possession of the land in question is actually with them; the respondents have taken the possession without following any due procedure; the possession which is taken by the competent authority is not in accordance with law; and hence the benefit of the provisions of the Repeal Act of 1999 should be given to the petitioners.

4. On the other hand, the learned AGP Shri Sood has submitted that in view of the dismissal of Special Civil Application No.6678 of 1999 in which this Court has specifically held that admittedly the possession of the land in question is taken over by the State Government and therefore the contention of the petitioners that the possession of the land in question is with them cannot be believed and the same is required to be rejected. He has also argued that by virtue of filing the present Special Civil Application the petitioners as such want to reopen the issue which is already settled even upto this Court and therefore the petition should not be entertained.

5. Having heard the learned advocates appearing for the parties, I am of the firm opinion that as such the petition is required to be dismissed with exemplary costs. As stated hereinabove, the competent authority and Deputy Collector, ULC, Rajkot, declared 536.19 sq.mtrs. of land as excess vacant land on 23rd December 1983; that the Urban Land Ceiling Tribunal dismissed the appeal preferred by the husband of petitioner No.1 and father of petitioners No. 2 and 3 original-declarant on 4.3.1988; necessary notices under Section 10(1) and 10(3) were issued and the possession was taken over on 23rd May 1988; and the petition Special Civil Application No. 4465 of 1998 filed by the husband of petitioner No.1 and father of petitioners No. 2 and 3 original-declarant also came to be dismissed by this Court. Not only that, the Special Civil Application No. 6678 of 1999 filed by husband of petitioner No.1 and father of petitioners No. 2 and 3 original-declarant also came to be dismissed by this Court on 7.8.2001 in which it is specifically held that the possession of the land in question is already taken over by the State Government and the said land cannot be restored to the petitioners. In view of the aforesaid orders, the prayer of the petitioners in the present Special Civil Application cannot be granted allowing the petitioners to agitate the same point which is raised in the present Special Civil Application and to grant any relief in the present Special Civil Application will amount to reviving the questions and the proceedings which have already become final. The Special Civil Application No. 4465 of 1988 filed by the husband of the

petitioner against the judgment and order passed by the competent authority and the Deputy Collector, ULC, Rajkot dated 4.3.1988 was already dismissed by this Court and therefore it is not open for the petitioners to reagitate the same thing and to pray for quashing and setting aside the order passed by respondent No.3 Deputy Collector, dated 17.9.1980. As such so far as the challenge to the said order dated 17.9.1980 passed by the competent authority and Deputy Collector, ULC, Rajkot is concerned, the same is not tenable at law at all, as after the said order the competent authority had processed the declaration/form under Section 6(1) of the Act and had declared 536.19 sq.mtrs. of land as excess vacant land which came to be challenged by the husband of petitioner No.1 before the Urban Land Ceiling Tribunal which came to be dismissed and the said order also came to be challenged before this Court, and thus the grievance of the petitioner that the said land/property admeasuring 505.16 sq.mtrs. of land situated at Jagannath Sheri, Rajkot came to be negatived in the aforesaid three proceedings, and the finding and order of the competent authority, ULC, Rajkot to the effect that the aforesaid property in question was required to be considered in the holding of Rameshchandra Shamji Raninga, husband of petitioner No.1 came to be confirmed upto this Court. Therefore, it is not open for the petitioner to reagitate the same thing again which is confirmed upto this Court. So far as the challenge to the order passed by the respondent No.2 dated 15.3.2002 is concerned, as such the representation made by the petitioners before the State Government was not maintainable at all. Inspite of that they moved an application before the State Government and the State Government considering the fact that possession of the land in question is already taken over by the competent authority and the land in question is already declared as excess vacant land, the prayer for deletion of their land from the list of excess vacant lands maintained by the State Government is rightly rejected by the State Government. Under the circumstances, there is no substance in the present Special Civil Application. In view of the aforesaid proceedings and the Special Civil Application No. 4465 of 1988 and Special Civil Application No. 6678 of 1999 filed by the husband of petitioner No.1 and father of petitioners No. 2 and 3, the present Special Civil Application is required to be dismissed with exemplary costs. Accordingly, the Special Civil Application is dismissed. Notice is discharged. The petitioners are directed to pay costs of Rs. 2,500/= to the respondents.

[M.R. Shah, J.]

rmr.